

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

|                        |   |                           |
|------------------------|---|---------------------------|
| JOSEPH T. EVANS,       | ) |                           |
|                        | ) |                           |
| Plaintiff,             | ) | Case No. C05-0133-MJP-JPD |
|                        | ) |                           |
| v.                     | ) |                           |
|                        | ) |                           |
| WILLIAM HAYES, et al., | ) | REPORT AND RECOMMENDATION |
|                        | ) |                           |
| Defendants.            | ) |                           |
|                        | ) |                           |

INTRODUCTION AND SUMMARY CONCLUSION

Plaintiff is proceeding *pro se* and *in forma pauperis* in this 42 U.S.C. § 1983 civil rights action. Plaintiff alleges that officers at the King County Correctional Facility violated his civil rights by misdirecting and opening mail that contained his medical records. The parties have filed cross motions for summary judgment and motions opposing summary judgment. Having carefully reviewed the parties' papers, supporting documents, and the available record, the Court recommends that plaintiff's motion for summary judgment be DENIED, defendants' motion for summary judgment be GRANTED, and the case be dismissed with prejudice.

FACTS AND PROCEDURAL HISTORY

Plaintiff is a state prisoner currently incarcerated at the McNeil Island Correction Center in Steilacoom, Washington. This litigation, however, concerns violations of his civil rights, which allegedly occurred while he was incarcerated at the King County Correctional

01 Facility in Kent, Washington (the “RJC”). Plaintiff’s amended complaint alleges that Major  
02 William Hayes, Staff Supervisor Lynn Manning, and RJC mail room staff member Greg  
03 Hanson violated his civil rights by misdirecting and opening mail that was addressed to him and  
04 that contained some of his medical records. Dkt. No. 13.

05 On or about October 4, 2004, plaintiff requested certain medical records from St.  
06 Francis Hospital (“St. Francis”). Dkt. No. 27. Although St. Francis sent fifty-seven pages of  
07 plaintiff’s medical records to “J. Evans” at the RJC, plaintiff alleges that he never received  
08 them. Dkt. No. 27, Letter from St. Francis to Plaintiff (Nov. 29, 2004). Rather, because RJC  
09 mail room staff member Greg Hanson could not identify an inmate by that name, he forwarded  
10 the records to Jail Health Services, where they were opened without plaintiff’s permission and  
11 outside of his presence.<sup>1</sup> *Id.*; Dkt. No. 23. Plaintiff alleges that such actions violate his Fourth,  
12 Eighth, and Fourteenth Amendment rights.<sup>2</sup> *Id.* Plaintiff has moved for summary judgment as  
13 to liability and requests that damages be determined at trial. Dkt. No. 27.

14 In their response and cross-motion for summary judgment, defendants argue that  
15 plaintiff has failed to show that Major Hayes and Staff Supervisor Manning violated his civil  
16 rights. Dkt. No. 36, 37. They argue that a single, isolated instance of opening an inmate’s  
17 confidential prison mail, even if it was negligent, does not support a § 1983 action. *Id.*

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19 <sup>1</sup>“Defendants also admit that an envelope from a healthcare facility was received in the  
20 mail room and that it appeared to contain medical records; that the envelope listed the  
21 addressee as J. Evans; that Defendant Hanson could not identify an inmate at that time as  
22 having that name, and that Defendant Hanson forwarded the envelope to Jail Health Services  
unopened.” Dkt. No. 23.

23 <sup>2</sup>Plaintiff’s pleadings make reference to a variety of legal terms that suggest he is  
24 attempting to raise a claim for violation of doctor patient privilege, intentional infliction of  
25 emotional distress, a breach of contract claim, violations of prison mail policy, and a violation  
26 of C.F.R. Pt. 2. Dkt. No. 13. However, none of these claims appear to have a sufficient  
factual or legal basis for this Court to address them in further detail. *Andrews v. King*, 398  
F.3d 1113, 1121 (9th Cir. 2005) (indicating that frivolous cases, for purposes of 28 U.S.C. §  
1915(g), are defined as having “little weight or importance” and “no basis in law or fact”).

01 Defendants further argue that plaintiff's motion is inadequately supported by legal authority  
02 and that it lacks properly developed legal arguments. *Id.* Finally, defendants argue that  
03 plaintiff has not articulated adequately tort or contract claims. *Id.* Plaintiff's motion in  
04 opposition argues, among other things, that defendants should have been able to determine his  
05 whereabouts in the RJC and that the facts admitted in defendants' answer are sufficient for the  
06 Court to grant summary judgment in plaintiff's favor. Dkt. No. 40.

#### 07 SUMMARY JUDGMENT STANDARD

08 Summary judgment is appropriate when, viewing the evidence in the light most  
09 favorable to the nonmoving party, there exists "no genuine issue as to any material fact" such  
10 that "the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A  
11 material fact is a fact relevant to the outcome of the pending action. *See Anderson v. Liberty*  
12 *Lobby, Inc.*, 477 U.S. 242, 248 (1986). Genuine issues of material fact exist when the  
13 evidence would enable "a reasonable jury . . . [to] return a verdict for the nonmoving party."  
14 *Id.* (internal citations omitted). In response to a properly supported summary judgment  
15 motion, the nonmoving party may not rest upon mere allegations or denials in the pleadings,  
16 but must set forth specific facts demonstrating a genuine issue of fact for trial and produce  
17 evidence sufficient to establish the existence of the elements essential to his case. *See* Fed. R.  
18 Civ. P. 56(e). A mere scintilla of evidence is insufficient to create a factual dispute. *See*  
19 *Anderson*, 477 U.S. at 252.

#### 20 DISCUSSION

21 A. Defendants' motion for summary judgment should be granted as to  
22 defendants Hayes and Manning, because plaintiff has failed to show that  
either defendant personally participated in violating his civil rights.

23 In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must assert that  
24 he suffered a violation of rights protected by the Constitution or created by federal statute, and  
25 that the violation was proximately caused by a person acting under color of state or federal  
26 law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991); *see also* WMX

01 *Technologies, Inc. v. Miller*, 197 F.3d 367, 372 (9th Cir. 1999) (en banc). Section 1983  
02 liability arises only upon a showing that defendants personally participated in violating  
03 plaintiff's civil rights. *Respondeat superior* liability will not support § 1983 liability unless  
04 plaintiff demonstrates that a supervisor participated in the violations, directed the violations, or  
05 knew about the violations and did nothing to prevent them. *Taylor v. List*, 880 F.2d 1040,  
06 1045 (9th Cir. 1989) (internal citation omitted); *see also Mabe v. San Bernardino County*  
07 *Dep't of Pub. Soc. Serv.*, 237 F.3d 1101, 1109 (9th Cir. 2001).

08 In this case, plaintiff has failed to demonstrate that defendants Hayes and Manning  
09 personally participated in any violation of his constitutionally protected civil rights. Plaintiff's  
10 pleadings do not demonstrate that defendants Hayes and Manning took any action with respect  
11 to the routing or opening of plaintiff's mail. Rather, the only action Major Hayes appears to  
12 have taken in connection with this matter was to respond to plaintiff's inmate grievance. In a  
13 letter dated January 3, 2005, Major Hayes indicated that plaintiff's mail containing certain  
14 health records was inadvertently sent to Jail Health Services. Dkt. No. 13, Letter from Major  
15 Hayes to Plaintiff (Jan. 3, 2005). Plaintiff alleges no further involvement on the part of Major  
16 Hayes. Hence, when construing the evidence in a light most favorable to the plaintiff, there is  
17 no indication that Major Hayes personally participated in the alleged violations, that he  
18 directed them, or that he knew about them and did nothing to prevent them. Defendants'  
19 motion for summary judgment should therefore be granted as to Major Hayes.

20 Similarly, plaintiff fails to demonstrate how Staff Supervisor Manning personally  
21 participated in the violation of his civil rights. It appears that plaintiff's complaint with respect  
22 to Staff Supervisor Manning is that "she did not adequately no[r] even meaningful [sic] show  
23 concern" for plaintiff's mail. Dkt. No. 27, Statement of Undisputed Facts. He also appears to  
24 take issue with the response Supervisor Manning gave to a grievance he filed on this issue.  
25 Dkt. No. 40. Even taken in the light most favorable to plaintiff, these allegations do not  
26 demonstrate that Supervisor Manning personally participated in the alleged violations, directed

01 them, or knew about the violations and did nothing to prevent them. At best, they suggest she  
02 did not respond to plaintiff's grievance in the manner he preferred. Defendants' motion for  
03 summary judgment should therefore be granted as to Staff Supervisor Manning.

04 B. Defendants' motion for summary judgment should be granted as to  
05 Greg Hanson on plaintiff's Fourth, Eighth, and Fourteenth Amendment  
06 claims.

07 Defendants' motion for summary judgment should be granted as to mail room staff  
08 member Greg Hanson on plaintiff's Fourth, Eighth, and Fourteenth Amendment claims.

09 Although the Ninth Circuit has not spoken directly on this issue as to date, several courts of  
10 appeals have held that a single, isolated case of a prison official opening an inmate's mail,  
11 without any evidence of improper motive or resulting interference with the inmate's right to  
12 counsel or access to the courts, does not give rise to a constitutional violation for purposes of  
13 § 1983. *Gardner v. Howard*, 109 F.3d 427, 431 (8th Cir. 1997); *Smith v. Maschner*, 899 F.2d  
14 940, 944 (10th Cir. 1990); *see Morgan v. Montanye*, 516 F.2d 1367, 1370-71 (2d Cir. 1975).

15 Here, there is no allegation that the opening of plaintiff's mail was anything more than an  
16 isolated incident. Dkt. No. 23. Additionally, there is no allegation that in any way the incident  
17 interfered with plaintiff's right to counsel or access to the Courts.

18 Moreover, there is no evidence that Mr. Hanson was motivated by any ill intent. To  
19 the contrary, plaintiff has alleged that Mr. Hanson was negligent in his handling of plaintiff's  
20 mail.<sup>3</sup> Indeed, he argues that Mr. Hanson should have been able to identify his whereabouts in  
21 the RJC and that he should have returned the mail to sender, rather than route it to Jail Health  
22 Services. Dkt. Nos. 27, 40. However, "mere negligence [does not] sustain a . . . claim under  
23 section 1983[.]" *Stevenson v. Koskey*, 877 F.2d 1435, 1440-41 (9th Cir. 1989). Thus, even

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24 <sup>3</sup>Throughout plaintiff's complaint and other papers, he consistently refers to negligence  
25 and principles of negligence. In a few instances he uses terms that suggest he believes  
26 defendants acted willfully, e.g., defendants acted with "willful negligence[.]" Dkt. No. 13.  
Looking at plaintiff's papers as a whole, however, the gravamen of his complaint is that  
defendants acted negligent.

01 when viewing the facts in the light most favorable to plaintiff, he cannot prevail on his § 1983  
02 claim against Mr. Hanson.

03 C. Mr. Hanson is entitled to qualified immunity.

04 Even if plaintiff's claim against Mr. Hanson is proper under § 1983, summary judgment  
05 should be granted for defendant on grounds of qualified immunity.<sup>4</sup> Public officials who  
06 perform discretionary functions enjoy qualified immunity in a civil action for damages,  
07 provided that his or her conduct does not violate clearly established federal statutory or  
08 constitutional rights, of which a reasonable person would have known. *Harlow v. Fitzgerald*,  
09 457 U.S. 800, 818 (1982). Qualified immunity is "immunity from suit rather than a mere  
10 defense to liability." *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985).

11 To determine whether an official is entitled to qualified immunity, the court must first  
12 determine whether the facts alleged, when taken in the light most favorable to the plaintiff,  
13 demonstrate that the defendant's conduct violated a constitutional right. *Saucier v. Katz*, 533  
14 U.S. 194, 201 (2001); *Cruz v. Kauai County*, 279 F.3d 1064, 1068 (9th Cir. 2002). If the  
15 plaintiff's pleadings could be found to allege a violation of a constitutional right, the court must  
16 determine whether the right was "clearly established" at the time of the alleged violation.  
17 *Saucier*, 533 U.S. at 201; *Cruz*, 279 F.3d at 1069.

18 A right is "clearly established" if its contours are clear enough for a reasonable official  
19 to understand that his or her actions would violate that right.<sup>5</sup> *Id.* at 202 (citing *Anderson v.*  
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21 <sup>4</sup>Although defendants do not raise the qualified-immunity defense in their motion for  
22 summary judgment, they did raise it in their answer. Dkt. No. 23; *see Sonoda v. Cabrera*, 255  
23 F.3d 1035, 1040 n.2 (9th Cir. 2001) (indicating that district court may grant motion *sua sponte*  
24 for summary judgment *sua sponte* on qualified immunity grounds when defendants raise it in  
their answer).

25 <sup>5</sup>The Court must turn first to controlling authority in this Circuit or from the Supreme  
26 Court of the United States. *Sorrels*, 290 F.3d at 970. If no controlling authority exists, the  
Court should next turn to decisions of "sister Circuits, district courts, and state courts." *Id.*  
(internal citations omitted).

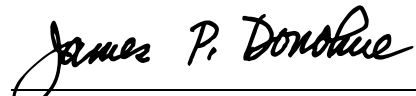
01 *Creighton*, 483 U.S. 635, 640 (1987)). Because it is often difficult for officials to determine  
02 whether their conduct is consistent with the law, the dispositive inquiry is “whether it would be  
03 clear to a reasonable officer that his conduct was unlawful in the situation he confronted.” *Id.*  
04 Thus, an official who makes a mistake in applying the relevant legal doctrine may still be  
05 entitled to qualified immunity if his or her mistake was reasonable. *Kennedy v. City of*  
06 *Ridgefield*, 411 F.3d 1134, 1141-42 (9th Cir. 2005). Plaintiff bears the burden of showing that  
07 the right in question was clearly established under this second prong. *Sorrels*, 290 F.3d at 969.

08 In this case, plaintiff has failed to articulate a clearly established constitutional right.  
09 The Ninth Circuit, for example, has held that the opening of an inmate’s mail from public  
10 agencies, public officials, and the news media, outside the inmate’s presence, is not an  
11 actionable constitutional violation. *Mann v. Adams*, 846 F.2d 589, 590-91 (9th Cir. 1988) (per  
12 curiam). In addition, the Court has held that inadvertently opening an inmate’s legal mail  
13 outside of his presence does not give rise to a § 1983 claim. *Stevenson*, 877 F.2d at 1441.  
14 The private nature of medical records notwithstanding, plaintiff has not shown that there is a  
15 clearly established right to having his medical mail opened only in his presence. Even if such a  
16 right does exist, Mr. Hanson’s decision to send plaintiff’s medical mail to Jail Health hardly can  
17 be considered unreasonable. Mr. Hanson is therefore entitled to qualified immunity, and  
18 defendants’ motion for summary judgment should be granted to him on that basis.

19 CONCLUSION

20 For the reasons discussed above, defendants’ motion for summary judgment should be  
21 granted and the case dismissed with prejudice. Plaintiff’s motion for summary judgment  
22 should be denied. A proposed order accompanies this Report and Recommendation.

23 DATED this 13th day of October, 2005.

24   
25 JAMES P. DONOHUE  
26 United States Magistrate Judge